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Supreme Court, U.S.
F I L E D
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No. 00-191

In The

Supreme Court of the United States

FEDERAL ELECTION COMMISSION,

Petitioner,

v.

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF FOR AMICUS CALIFORNIA REPUBLICAN PARTY IN SUPPORT OF THE RESPONDENT

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INTERESTS OF AMICUS CURIAE[1]

The California Republican Party ("Party" or "Amicus") is the ballot-qualified party of Republican voters in California. The Party was a petitioner in *California Democratic Party, et al. v. Jones, et al.*, 530 U.S. 567 (2000), supports candidates for federal office through a federal campaign committee in the same manner as the Respondent herein, and has particular experience with the challenged Party Expenditure Limit. The Party also was a plaintiff in a challenge to California's Proposition 208 state campaign finance initiative statute in *California Pro-Life Council PAC, et al. v. Scully, et al.*, 989 F. Supp. 1282 (E.D. Cal. 1998), *prelim. inj. aff'd*, 164 F.3d 1189 (9th Cir. 1999), in which the federal district court also took evidence on, and made factual findings concerning the relationship between political parties, their candidate nominees and contributors. These findings may be useful to this Court in evaluating the anti-corruption rationale asserted by the Petitioner Federal Election Commission in respect to the Party Expenditure Limit.

The Party also is concerned that it has been, and would continue to be, unable to communicate via a single mailing with all registered Republican voters either statewide to support its U.S. Senate nominees or in any of its 52 Congressional districts to support the Party's Congressional nominees in a regular general election or special

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[1] All parties have consented to the filing of this Amicus Curiae Brief, as indicated by letters of consent filed with the Clerk. This brief was not authored, in whole or in part, by any counsel for any party. No person or entity, other than amicus curiae, has paid for the preparation or submission of this brief.

election, without violating the Party Expenditure Limit. This restriction is particularly harmful to challenger candidates.

The Party believes the Party Expenditure Limit is an unconstitutional expenditure limit unjustified by the asserted governmental interest of "preventing corruption or the appearance of corruption."

SUMMARY OF ARGUMENT

The Party Expenditure Limit deters political parties from performing core First Amendment speech and associational functions in communicating not only with voters but also with the political parties' members concerning candidates. As such the Party Expenditure Limit operates as an unconstitutional expenditure limit without record evidence, or evidence in the analogous District Court Findings of Fact cited by Amicus, to support the restriction. Political parties' nature and activities, as described more particularly herein, demonstrate that arguments the Party Expenditure Limit is necessary to enforce Federal Election Campaign Act candidate contribution limits are speculative and contrary to record evidence.

ARGUMENT

I. State Political Parties in Modern Politics

Political parties are formed chiefly to elect candidates, who are the parties' standard-bearers in the election, to political offices. Amicus California Republican

Party, like other political parties such as the Respondent, works to elect its candidates, and also pursues litigation, speaks out on issues, services its members by hosting conventions, meetings and similar gatherings, makes independent expenditures, and participates in ballot measure campaigns.

Political parties' role in contemporary American politics has been disputed by academics and justices. However, this Court's decisions in both election cases and campaign reform cases have recognized that, respecting the protection of central, contemporary First Amendment speech and associational interests – particularly in the context of support and endorsement of candidates – political parties have a significant, if not special, constitutional status. *See, e.g., Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 218 (1986); *Eu v. San Francisco Democratic Central Committee*, 489 U.S. 214, 224 (1989); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Colorado Republican Federal Campaign Committee v. Federal Election Comm'n*, 518 U.S. 604 (1996); *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981); *California Democratic Party, et al. v. Jones, et al.*, 530 U.S. 567, 120 S. Ct. 2402 (2000).

This role is not without its challenges. Many commentators have observed that party power and influence have been in decline, with potential deleterious effects such as reducing voter turnout, increasing appearances of self-financed candidates, and personality oriented politics. *See* A. James Reichley, *The Life of the Parties* 341 (Rowman & Littlefield 2000 ed.).

A. The Political Party's Organizational Structure, Functions, and Fundraising Requirements Are Diffuse and Inimical to Corrupting Influences on the Party's Candidates

The Republican Party in California is a representative organization, which operates through a state central committee (Calif. Elec. Code §§ 7300-7389) and fifty-eight county central committees (Calif. Elec. Code §§ 7400-7470). *Eu v. San Francisco Democratic Central Committee*, 489 U.S. 214, 224 (1989). The state central committee's members comprise approximately 185 nominees and elected Republican partisan officeholders of state constitutional and legislative offices and of federal Senatorial and Congressional offices, nominated by Republican voters at partisan primary elections and elected by voters at ensuing general elections, together with approximately 650 of their appointees, and with approximately 550 representatives of Republican county central committees and Republican volunteer clubs (Party Bylaws, Art. I, § 2.01).[2] The fifty-eight county central committee organizations have nearly 1,000 members composed of elected central committee members elected by voters in their counties at the partisan primary election, and *ex officio* members comprising nominee and elected officeholders who represent electoral districts within the jurisdictions of their counties. Calif. Elec. Code §§ 7400-7406.

The state central committee constitutes the California Republican Party. That central committee operates through ten elected officers (Party Bylaws, Art. II, § 2.03)

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[2] The text of the Party's Bylaws may be found on its website <http://www.cagop.org/resources/bylaws.htm>.

and representatives who comprise a twenty-member Board of Directors (Party Bylaws, Art. II, § 2.03), a one-hundred member Executive Committee (Party Bylaws, Art. II, § 2.04), and standing committees that perform vital organizational functions. For example, the California Republican Party's bylaws provide for a "Cal Plan Committee," whose members are appointed by the Party's Chairman, and which functions to "propose a political plan and budget and make recommendations to the Party's Board of Directors on funding the budget to implement this political plan" to support state candidates. Party Bylaws, Art. II, § 2.06.06, subdiv. (H). The Party's bylaws also provide for a "Congressional Target Committee," similarly appointed and authorized, to propose a political plan to elect Congressional candidates. Party Bylaws, Art. II, § 2.06.06, subdiv. (I).

Since 1909, the Party's nominees are selected by Republican voters by partisan primary election. *Socialist Party v. Uhl*, 155 Cal. 776, 780 (1909). The Primary Election Law of 1909 created a closed primary, and California partisan primaries remained closed until the adoption of the Proposition 198 "blanket primary" invalidated by this Court in the last term. *California Democratic Party v. Jones*, *supra*. As this Court held in *California Democratic Party v. Jones*, "[r]epresentative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." 120 S. Ct. at 2408.

The principal opportunity for the Party to elect its nominee candidates is at general elections. The Party Expenditure Limit operates at such elections, and limits

the amount of resources the California Republican Party can spend in cooperation with its United States Senate and Congressional nominees, and thereby impinges upon the Party's ability to perform its core function.[3]

The Party's two principal means of electing candidates include "grass roots" organizing, to register Republican voters, assist Republicans in voting through absentee ballot and get-out-the-vote activities, and to express Republican viewpoints on a variety of issues,[4] and direct candidate support, through posted mailings and broadcast media.

B. Party Fund-Raising Needs and Broad Contributor Base

These grass roots and candidate support activities cost money. The Party raised and spent approximately $18 million during the 1998 elections on such activity, of which approximately $10 million was for federal candidate support and for the federal "share" of expenses for administration and overhead, voter drive activities

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[3] In 2000, the California Republican Party's coordinated expenditure limit was $33,780 per House race and $1,636,438 per Senate race. Federal Election Commission Release, Mar. 1, 2000.

[4] To accomplish these tasks, Amicus attempts to communicate and motivate the approximately 5.5 million registered Republicans in California, and persuade the approximately 10 million registered voters who are not Republicans to support Republican candidates and re-register as Republicans. It also tries to reach the 27% of eligible citizens in California who have chosen not to register to vote, to have them register and vote Republican.

including voter registration and get-out-the-vote, fund-raising costs.[5] Approximately 20% of that $10 million was devoted to support of candidates subject to the Party Expenditure Limit.[6] However, all $10 million was raised in amounts not exceeding $5,000 per contributor to the Party's federal committee or of up to $20,000 per contributor to the national party committee permitted to be transferred to the Party's federal committee. 11 C.F.R. § 110.1(c).

The Party's ability to support federal candidates under the Party Expenditure Limit depends on thousands of contributors. The Party's fund-raising apparatus and methods of necessity are wide-ranging in order to reach such a large number of potential, individual donors. Receipts from national party committee transfers, which are gathered from nationwide sources, necessarily are even more widespread and attenuated, and are inconsistent with the Petitioner's picture of large donors who

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[5] The Party pays for its administration costs, and other mixed federal/non-federal expenditures, under a federal/non-federal funding ratio set by federal law. 11 C.F.R. 106.5. That requirement is not at issue here, but the Court should remain mindful that federal restrictions on contributions to parties reach more than the party's direct federal activity on behalf of federal candidates. The Party's federal campaign reports are available for review on the Federal Election Commission's website, <www.fec.gov>, and its California filings are available on the California Secretary of State's website, <cal-access.ss.ca.gov>

[6] The Party spent approximately $2 million in support of its U.S. Senate candidate in the 1998 general election, and $32,500 in support of a Congressional nominee in a special 22nd Congressional District election in early 1998.

somehow commandeer the Party for their own corrupt purposes of influencing its candidates or operating as a "conduit" to further their own illicit purposes.

II. *Scully* Proposition 208 Findings Show that Political Parties are not Corrupting

The experience of Amicus, as reflected in the District Court's findings made in the recent litigation over California's campaign finance law, is that no "anti-corruption" rationale exists for the Party Expenditure Limit. Amicus asks this Court to take notice of the findings of the U.S. District Court in *California Pro-Life PAC v. Scully*, 989 F. Supp. 1282 (E.D. Cal. 1998), *prelim. inj. aff'd*, 164 F.3d 1189 (9th Cir. 1999) (Findings of Fact posted by court at <www.caed.uscourts.gov>. In the *Scully* case, California political parties, political committees, and other political activists challenged numerous provisions of California's Proposition 208, which instituted numerous new campaign finance regulations into California law.[7]

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[7] Proposition 208 imposed contribution limits of $5,000 per contributor per year on contributions to political parties for any state campaign purpose (Calif. Gov. Code § 85303); prohibited "independent expenditures" by political party committees outright (Calif. Gov. Code § 85500); imposed aggregate limits on contributions by contributors to all state candidates and committees, including political parties of $25,000 per year (Calif. Gov. Code § 85310); and also imposed expenditure limits on political parties expenditures in support of candidates to 25% of the applicable spending limits imposed directly on candidates (Calif. Gov. Code § 85304).

In ruling on the contentions raised in *Scully*, Amicus and other Plaintiffs presented evidence in support of their allegations that these complex, interlocking contribution and expenditure limits effectively prevented the political parties and candidates from communicating effectively their campaign messages.

The political party plaintiffs presented evidence, and the District Court made Findings of Fact regarding party activity in California, that this Court may find enlightening and useful in the present matter. The District Court's Findings first addressed the role of the parties in supporting candidates for office. The District Court found that "[h]istorically, political parties have made significant expenditures in support of candidates and have coordinated those expenditures with their candidates." *Scully* Findings of Fact 414. The District Court continued:

> In the past, the majority of [California Democratic Party]'s and [California Republican Party]'s contribution to candidates have been in the form of coordinated "in-kind" contributions, such as mail pieces advocating the election of a candidate. In 1996, most candidates that received support from CDP, received more than 90% of that support in in-kind contributions. A high percentage of Party support for candidates was in the form of in-kind contributions.

Scully Findings of Fact 416.

"In the past, political parties have expressed support for candidates through communications with their members." *Scully* Findings of Fact 420. Such support can be expensive. The District Court found that a single mailer to Democrats or Republicans only in an Assembly district

costs approximately $40,000.[8] *Scully* Findings of Fact 418. "The costs of all aspects of campaigns have increased over time. Mail, phones, radio and television costs all continue to increase, and the political parties must use these means of communicating with their very large memberships." *Scully* Findings of Fact 419.

As these findings determined, the Party and other state party committees are dedicated to helping candidates, a task for which they are increasingly challenged by rising communication costs and (in the federal arena) the limits posed by the Party Expenditure Limit. The Party does not accept contributions earmarked for specific candidates. *Scully* Findings of Fact 410. If donors attempted to support candidates through the Party, such earmarked contributions would be legally attributable to the donor, thwarting any attempt to circumvent the limits. *See* 11 C.F.R. § 110.6(b), *see also* Calif. Gov. Code, §§ 84302 and 85704. Moreover, the Party chooses how and where to spend its funds. Contrary to Petitioner's implication, coordinated expenditures are not simply handed over to candidates in a manner "indistinguishable" from contributions.[9]

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[8] California's eighty State Assembly districts contain approximately 372,000 residents each, compared with the approximately 572,000 residents in each of the state's 52 Congressional districts.

[9] Indeed, U.S. Postal Service Regulations prohibit a state party from simply providing the money for a candidate to mail a campaign message using the Party's special bulk mailing permit, since the regulations governing a Party's bulk mailing do not allow unqualified third parties to participate in "cooperative mailings," i.e., to use the special bulk permit. *See*, *e.g.*, 39 U.S.C. § 3626; Domestic Mail Manual E670 (governing use of Standard (A) nonprofit permit).

Amicus' practice and experience, as demonstrated in record testimony and the District Court's findings in *Scully*, differ dramatically from the hypothetical posits about the potential for undue influence of not only putative donors with corrupt purposes, but also of the Party itself exercising corrupt purposes through its support of candidates. (Pet. Br. 25-34.)

The Party raises money to fund the "party-building" and candidate support activities in support of its federal and state candidates, and the Party's decision-makers (its officers, directors, Executive Committee, Cal Plan and Congressional Target Committees) make such decisions. As former Party Chairman Michael Schroeder succinctly stated in his trial testimony in the *Scully* case: "[T]he only criteria that we use, and the only criteria that are reflected in our political plans, are who can win." Schroeder trial testimony, *California Pro-Life Council PAC v. Scully* at 120 (hereinafter Schroeder trial testimony).

To the best knowledge of Amicus and according to the sworn trial testimony of its former Chairman, Party donors do not solicit or receive favors from elected officials in return for Party contributions. Nor do donors receive favors from the Party that can be understood in any way as "corrupt" because the Party, as a private organization, lacks the capacity to deliver a vote, change a ruling or otherwise provide a corrupt reward.

The Party's former Chairman also testified in *Scully* that he had never been asked by a donor to approach a

legislator with a legislative request, and had never heard of such a thing happening. Schroeder trial testimony at 116, 125. Nor do donors use party fund raisers as a means to lobby legislators. Schroeder trial testimony at 117, 126. Chairman Schroeder also noted in his deposition during discovery for the *Scully* case that the Party does not attempt to monitor or influence legislators concerning the positions they should hold on issues, or allocate funds to officials based upon the positions they hold, except to the extent that a candidate's opinions on issues affect his or her electability. Schroeder 1997 Deposition, at 91-94, 98-99, 104-05.

Accordingly, the Party Expenditure Limit, which limits a party's expenditures on behalf of its candidates, poses a real and onerous burden on a political party's core activity and its ability to communicate effectively not only with voters in general but also with the Party's own members. Moreover, in the experience of the Party, and as shown in District Court's Findings of Fact as well as sworn testimony in the *Scully* case, such a limit serves no cognizable "anti-corruption" purpose. The speculations of political commentators and academics, whatever they may be, should not outweigh the direct evidence offered on these points.[10]

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[10] Other courts presented with newspaper articles and similar documents containing vague sentiment about campaign corruption have found that evidence insufficient to justify limits. *See FEC v. NCPAC*, 470 U.S. 480, 499-500 (1985); *Colorado Republican Fed. Campaign Committee*, 41 F. Supp. 2d at 1200.

III. *Scully* Findings of Fact Substantiate That the Converse of Petitioner's Soft Money Fears is True, and that the Party Expenditure Limit Likely Promotes The Use of Soft Money to Evade Federal Candidate Contribution Limits

Petitioners argue that a party's ability to raise funds outside the federal limits (so-called "soft money") provides an arena where large soft-money donors can influence the party to make coordinated expenditures to the donor's favored federal candidates. According to the Petitioner, the Party Expenditure Limit serves in this attenuated fashion to prevent "soft money" circumvention of the federal individual contribution limits. Pet. Br. at 32. The Party agrees with the Respondent that *the converse* is more likely correct: that expenditure limits such as the Party Expenditure Limit actually promote efforts to circumvent the Federal Election Campaign Act's contribution limits to candidates by means of "soft money." *See, e.g., Nixon v. Shrink Missouri Government PAC*, 528 U.S. 337, 120 S. Ct. 897, 914 (2000) (Kennedy, J., dissenting.)

The Petitioner's national committee "soft-money" argument is just speculation – speculation seemingly without a shred of record evidence to support it – and should not cloud the issues raised in the instant case. This case entirely concerns whether the Party Expenditure Limit, funded by lawful contributions to a state party's federal committee, is unconstitutional. However, the Party would like to direct the Court's attention to several of the District Court's Findings of Fact in *Scully* that call into question Petitioner's "soft money" speculation.

The District Court in *Scully* found that California's state political committees engage in numerous non-federal campaign activities, including raising money and spending money to support or oppose state and local candidates and statewide ballot measures, and to engage in issue advocacy. A substantial percentage of the California political parties' annual non-federal campaign budgets, particularly in non-election years, is expended on administrative overhead, including office space, salaries, taxes, insurance, utilities, and party-building activities, such as voter registration and party conventions. (*Scully* Findings of Fact 399.) Were these expenses to be met using only funds raised under the federal hard dollar limits, it is likely, based upon the year-long experience of the Party in California under Proposition 208, "the Party would cease doing business in any meaningful way." (*Scully* Findings of Fact 408.)

Mindful of the District Court's decision in *Scully*, California's voters adopted campaign reforms by a new initiative statute, Proposition 34, at the November 2000 general election. Proposition 34's provisions promote the political parties' role in the state's political process, and these provisions encourage contributions to political parties in order to insulate candidates from special interest influences.[11]

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[11] Proposition 34's legislative findings state, *inter alia*, that "[p]olitical parties play an important role in the American political process and help insulate candidates from the potential corrupting influence of large contributions." The measure's purposes include "(7) To strengthen the role of political parties in financing political campaigns by means of reasonable limits on contributions to political party committees and by limiting

Proposition 34 limits contributions by "persons," including individuals, political action committees, corporations, and labor unions to candidates from $3,000 to $20,000 per election, based on the level of the political jurisdiction (Calif. Gov. Code §§ 85301-85302), and limit contributions to political parties to $25,000 per year to be used for contributions directly to non-federal candidates. Calif. Gov. Code § 85303(c). Political parties may make unlimited contributions to, and expenditures on behalf of non-federal candidates using such limited funds. *Compare* Calif. Gov. Code §§ 85303 *with* 85400(c).

Accordingly, Petitioner's general assertions that somehow a party's ability to raise soft money necessitates an expenditure limit such as the Party Expenditure Limit on fully regulated and reported hard dollar expenditures has no basis in the experience of Amicus. Petitioner's argument is unpersuasive, and should be rejected by this Court.

CONCLUSION

The Party Expenditure Limit unconstitutionally restricts political parties' associational and speech interests, particularly interfering with their communications

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restrictions on contributions to, and expenditures on behalf of, party candidates, to a full, complete and timely disclosure to the public." The ballot pamphlet containing the text of Proposition 34 is posted on the California Secretary of State's website at <vote2000.ss.ca.gov/VoterGuide/text/text___proposed___law___34.htm>

with voters and their party members concerning candidates. The Party Expenditure Limit, or any other limit on party expenditures made on behalf of candidates, does not serve a governmental interest in preventing corruption or the appearance thereof for the reasons set forth above. Parties exist to work with candidates. This observation is not evidence of corruption but is instead "consistent with our model of representative democracy." *FEC v. Colorado Republican Federal Campaign Committee*, 231 F.3d 1221, 1232 (10th Cir. 2000) (*Colorado II*); *see also Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 630 (1996) (Kennedy, J., concurring).

Nevertheless, under current federal law the California Republican Party may not make expenditures of its own hard-dollar funds in coordination with one of its nominees to the House of Representatives exceeding $33,780, or in coordination with one of its nominees to the Senate exceeding $1,636,438. In a state with roughly 21.5 million citizens eligible to vote, these limits serve to diminish the Party's efficacy without constitutional justification.

Respectfully submitted,

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